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is ministerial and can therefore be delegated. *Kennedy v. Mayor of Pawtucket*, 24 R. I. 461; *Allison v. Corker*, 67 N. J. L. 596. The unconstitutional element found is that the recipients of the power are not public officers. But when authority to settle disputes as to who is the regular party nominee has been given to party officials, the delegation of power is constitutional, and the decision of the officials designated is final. *State v. Hauser*, 122 Wis. 534. And the appointment of state examining boards may also be delegated to voluntary associations. *Ex parte Gerino*, 143 Cal. 412. It seems impossible to reconcile the present case with these decisions. Furthermore, it is settled that when certain ministerial functions under primary laws have been entrusted to the officers of a political party, *mandamus* will issue to compel them to act. *State v. Jones*, 74 Oh. St. 418. Since the power of appointment can legally be delegated, and since the county central committees can be compelled to act, they are, in effect, constituted public officers by the very statute in question, and the reasoning of the court fails.

CONSTITUTIONAL LAW—SEPARATION OF POWERS—JUDICIAL RECOUNT AND RE-CANVASS OF BALLOTS. — The constitution of New York provides that "all laws regulating or affecting boards of officers charged with the duty of . . . counting votes at elections, shall secure equal representation of the political parties," and also that "the trial by jury in all cases in which it has been heretofore used shall remain inviolate forever." A statute provided that upon petition of any candidate for a certain office, the supreme court must proceed to a summary canvass of the vote at a certain election. A commissioner was to submit all disputed ballots to the court, which should pass upon each and, in conclusion, issue an order which should supersede the returns of the election officers. *Held*, that the statute either creates a board to recount the ballots, and therefore is unconstitutional because the board is not of the bi-partisan character required, or provides for a judicial determination of the title to an office, and is unconstitutional because of the failure to provide for a jury trial. *Metz v. Maddox*, 32 N. Y. L. J. 801 (N. Y. Ct. App. Nov. 19, 1907).

For a discussion of the power of the legislature to impose non-judicial duties upon the courts, suggested by the decision of this case in the lower court, see 21 HARV. L. REV. 138.

CONSTITUTIONAL LAW — TRIAL BY JURY — WAIVER IN CRIMINAL CASES. — In a prosecution for violation of the game laws, the defendant pleaded not guilty, waived a jury, and the case was tried by the court. A statute provided that issues of fact must be tried by a jury. *Held*, that judgment of conviction is void. *In re McQuown*, 91 Pac. 689 (Okl.). See NOTES, p. 212.

CONSTITUTIONAL LAW — WHO MAY SET UP UNCONSTITUTIONALITY — CORPORATION BARRED BY ACCEPTING STATUTE WITH CHARTER. — Massachusetts enacted a statute whereby all street railroads were required to transport children to and from public schools at half the regular fare. Later the appellant was incorporated in Massachusetts, its charter subjecting it to all the duties set forth in all general laws relating to street railway companies. The appellant was convicted for not carrying such children at half fare. *Held*, that it may not contest the constitutionality of the statute. *Interstate Consolidated St. Ry. Co. v. Massachusetts*, U. S. Sup. Ct., Nov. 4, 1907.

It is clearly settled that a state may fix the terms upon which it will allow the use of the corporate franchise. The court seeks to determine the terms agreed upon, because to these the corporation cannot later object. *Chicago, etc., Ry. v. Zerneck*, 183 U. S. 582. An express reference to statutes would seem sufficient to incorporate them as terms of the charter, and indeed some courts have considered all existing statutes to be so incorporated without reference. *Alabama, etc., Ry. v. Odeneal*, 73 Miss. 34; *cf. Park Bank v. Remsen*, 158 U. S. 337. But though it is granted that the corporation has accepted the obligations of all laws of a class, still it would seem that it could show that something on the statute-books was unconstitutional, and therefore not a law. Consequently the court must construe the terms to be that the corporation accepts everything

purporting to be a law of that class. When we incorporate these statutes in the charter, the case is brought within the wider doctrine that a person, natural or artificial, is estopped from setting up the unconstitutionality of a statute, after availing himself of its provisions. *Mayor v. Manhattan Ry.*, 143 N. Y. 1; see 21 HARV. L. REV. 133.

**CONTRACTS — CONSTRUCTION — EXCEPTION OF HOLIDAYS FROM TIME ALLOWED BY CHARTER-PARTY FOR LOADING VESSEL.** — By the terms of a charter-party the plaintiffs were to load the defendant's vessel "in seven weather working days (Sundays and holidays excepted)." For every day saved the plaintiffs were to be paid dispatch money; for every day in excess they were to pay demurrage. They loaded the vessel in seven days, the work being continued through two holidays, and sued for dispatch money for the two days saved. *Held*, that the plaintiffs cannot recover. *Nelson & Sons, Ltd., v. Nelson Line, Liverpool, Ltd.*, [1907] 2 K. B. 705.

The court bases its decision on the theory that, although by the terms of the charter-party holidays would not count whether work was done on them or not, an agreement should be inferred that those holidays on which work was done were to count as working days. For this the court has the authority of two recent English decisions. *Whittall & Co. v. Rahtken's Shipping Co.*, [1907] 1 K. B. 783; *Branchelow S. S. Co. v. Lamport & Holt*, [1907] 1 K. B. 787; but see *Houlder v. Weir*, [1905] 2 K. B. 267. No American decision on the point has been found. Granting that some agreement may be implied, since the work could be done only with the acquiescence and assistance of the defendants, the court seems to have made inferences unwarranted in the absence of evidence. By the terms implied the defendants are not only enabled to dispatch their vessel two days ahead of contract time, but they secure this benefit without paying dispatch money; whereas the plaintiffs get no added benefit, and their liability for demurrage accrues two days earlier than it otherwise would. The implication of the court seems not only unwarranted, but unfair to the plaintiffs.

**CORPORATIONS — DIRECTORS — DIRECTOR'S RIGHT TO SALARY WHEN QUALIFYING WITH SHARES HELD IN TRUST.** — Corporation A purchased stock in corporation B and transferred it to X, a director of A, who made a declaration of trust in favor of A. X was thereafter elected a director in B, which required each director to be a shareholder. It appeared on the records of A that the stock transfer was made to enable X to become a director in B "to represent the interests of this company." *Held*, that the A company cannot recover the salary received by X from the B company. *In re Dover Coalfield Extension, Ltd.*, [1907] 2 Ch. 76.

It is undisputed that the proceeds of a trust *res* are held in trust. The question here is whether X's salary is proceeds resulting from the qualifying shares. It has been held, under a statute deferring payment of money due members of a corporation as members, that a director comes in as an ordinary creditor, although he is required to be a shareholder. *Ex parte Beckwith*, [1898] 1 Ch. 324. It would therefore follow that such salary is received as compensation for services rendered, and not as profits on the shares. Indeed, were it otherwise, it is difficult to see why any subsequent holder of such shares should not be entitled to similar profits. If it were X's duty as director in A to become a director in B, his salary might belong to A, but where as here a director is rendering service outside the course of his duty, he is entitled to compensation. *Rogers v. Hastings, etc., Co.*, 22 Minn. 25. Moreover it may be argued that X became a director in B to advance the interests of A rather than those of B, and therefore, since X and A are both fraudulent, equity will not assist either.

**CRIMINAL LAW — PROCEDURE — NECESSITY FOR PLEA.** — The record of the defendant's conviction for a felony showed that he was arraigned and entered a demurrer, which was overruled, whereupon he was tried and convicted. It did not show affirmatively that a plea had been entered by or for the defendant. There was the usual statute providing that convictions should not be set